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Attorneys for Plaintiff
 MOBILE TELECOMMUNICATIONS
 TECHNOLOGIES, LLC

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

MOBILE TELECOMMUNICATIONS
 TECHNOLOGIES,

Plaintiff,

v.

SAMSUNG ELECTRONICS CO., LTD.,
 SAMSUNG ELECTRONICS AMERICA,
 INC., SAMSUNG
 TELECOMMUNICATIONS AMERICA,
 LLC.,

Defendants.

Case No.:

CV 16 80012 MISC.

**DECLARATION OF CRAIG S. JEPSON
 IN SUPPORT OF PLAINTIFF MOBILE
 TELECOMMUNICATIONS
 TECHNOLOGIES, LLC'S MOTION TO
 COMPEL THIRD-PARTY GOOGLE,
 INC. TO PRODUCE DOCUMENTS AND
 TO MAKE AVAILABLE AN
 ADDITIONAL WITNESS AND
 REQUEST FOR SANCTIONS
 PURSUANT TO FRCP 37**

FILED
JAN 14 2016
 SUSAN Y. SOONG
 CLERK, U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE

See pt

NC

1 I, Craig S. Jepson, am admitted to the Bar of the Supreme Court of the United States of
2 America, the Fifth Circuit, the Ninth Circuit, the Federal Circuit Court of Appeals, and to the
3 Bars of the United States District Courts for the Eastern, Northern, Southern, and Western
4 Districts of Texas and to the Northern District of Texas. I am a member in good standing of the
5 State Bar of Texas and the State Bar of California. I am, and have been since 1989, registered
6 to practice before the United States Patent and Trademark Office. (Reg. No. 33,517). I make
7 this declaration either from my own personal knowledge, or from the files of Reed & Scardino
8 LLP kept in the ordinary course of business with which I am familiar, as should be apparent
9 from the context of my statements.

10 1. Exhibit 1 is a true and correct copy of the subpoena issued by MTel and served
11 upon third-party Google, Inc., dated August 10, 2015. (MTel's "First Subpoena."). Topic For
12 Deposition number 5 reads: "The process by which a Client App will receive a message from
13 the GCM Connection Servers and what actions the Client App will take in response."

14 2. Exhibit 2 is a true and correct copy of excerpts from MTel's Claim Chart for U.S.
15 Patent No. 5,809,428, which was served upon defendant Samsung pursuant to local patent rule
16 3-1 of the Eastern District of Texas, Marshall Division. This claim chart shows that MTel
17 accuses all Samsung devices that utilize the Google Cloud Messenger of infringing the '428
18 Patent.

19 3. Exhibit 3 is a true and correct copy of U.S. Patent No. 5,809,428.

20 4. Exhibit 4 is a true and correct copy of excerpts from the November 11, 2015
21 deposition of Google's corporate representative, Francesco Nerieri.

22 5. Exhibit 5 is a true and correct copy of a document produced by third-party
23 Google, Inc. in response to MTel's First Subpoena. The document is bates-numbered
24 GOOG_MTL_00000663 and identifies the message types used for GCM.

25 6. Exhibit 6 is a true and correct copy of email correspondence between counsel for
26 Google, Andrea P. Roberts, and counsel for MTel, including my associate Dustin L. Taylor,
27 between the dates of November 17 and November 18, 2015.
28

1 7. Exhibit 7 is a true and correct copy of MTel's Notice of 30(B)(6) Deposition of
2 Google, Inc., included as part of MTel's Second Subpoena.

3 8. Exhibit 8 is a true and correct copy of correspondence served upon counsel for
4 Google, Andrea Roberts, by my associate Dustin L. Taylor. The correspondence followed an
5 earlier discussion between the parties where counsel for MTel identified testimony of Google's
6 corporate representative Mr. Nerieri that supported MTel's request for additional discovery.
7 The correspondence includes additional citations to the transcript that further support MTel's
8 request.

9 9. Exhibit 9 is a true and correct copy of Third Party Google Inc.'s Response to
10 Mobile Telecommunications Technologies, LLC's November 25, 2015 Subpoena for
11 Deposition and Documents, served upon MTel on December 11, 2015. Although MTel issued
12 two separate subpoenas for the matter of *Mobile Telecomms. Techs., LLC v. ZTE (USA), Inc.*,
13 2:13-CV-946 (lead case) and the matter of *Mobile Telecomms. Techs., LLC v. Samsung*
14 *Electronics Co., Ltd. et al.*, 2:15-cv-00183, Google only provided responses and objections to
15 MTel's subpoena in the HTC matter. The subpoenas in both matters are identical.

16 10. Exhibit 10 is a true and correct copy of email correspondence between counsel
17 for Google, including Andrea P. Roberts, and counsel for MTel between the dates of December
18 11, 2015, and December 17, 2015. On December 17, 2015, my associate Dustin L. Taylor
19 reminded counsel for Google of the location and start time for the scheduled deposition.

20 11. Exhibit 11 is a true and correct copy of the full transcript of MTel's Statement of
21 Nonappearance, taken by my associate Dustin L. Taylor on Friday, December 18, 2015.

22 12. Exhibit 12 is a true and correct copy of the Declaration of Service received by
23 counsel for MTel, confirming that MTel's November 20, 2015, Subpoena was properly served
24 upon an authorized representative of Google, Inc. Google did not object to improper service in
25 its formal objections. *See* Exhibit 6. Nor did Google raise the issue of improper service during
26 any of the parties' meet and confers.

27 13. Exhibit 13 is a true and correct copy of the Google Maps website, showing the
28 location of the headquarters of Google, Inc. and the location where the deposition and

1 production of documents was scheduled to occur. The two locations are approximately six
2 miles apart.

3 14. Exhibit 14 is a true and correct copy of an invoice by Huseby court reporting
4 services that MTel received in connection with MTel's Notice of Nonappearance.

5 15. Counsel for MTel, has diligently met and conferred with counsel for Google in
6 an attempt to resolve the present dispute without the Court's intervention. Following the initial
7 deposition of Google's corporate representative, Mr. Nerieri, my associate Dustin L. Taylor
8 notified counsel for Google that the witness was unprepared to testify as to Topic 5 of MTel's
9 deposition notice and requested an additional witness to testify. *See* Exhibit 6. Counsel for
10 Google refused. *Id.* Following service of MTel's second subpoena, the parties conferred via
11 telephone where my associate Dustin L. Taylor identified testimony by Mr. Nerieri that
12 supported MTel's request for additional testimony and for source code. Counsel for MTel then
13 served correspondence further identifying additional testimony. *See* Exhibit 8. Counsel for
14 Google nevertheless filed objections stating Google's refusal to produce an additional witness
15 or depositions. Exhibit 9. Although Google's Response included objections that the subpoena
16 was unduly burdensome and sought protected information, Google did not file a motion to
17 quash. Prior to the scheduled deposition, my associate Dustin L. Taylor reminded counsel for
18 Google of the noticed deposition location and start time. Exhibit 10. Counsel for Google
19 responded that Google would not make an appearance. *Id.* MTel made a notice of
20 nonappearance at the scheduled deposition. Exhibit 11.

21 16. MTel has incurred costs and fees associated with pursuing the discovery to which it is
22 entitled. These costs and fees include a \$300.00 USD charge by Huseby for fees associated
23 with Notice of Nonappearance. Exhibit 14. These costs further include approximately ten
24 hours of attorney time, as of the date of this declaration, associated with the meet and confer
25 process; making the notice of nonappearance, and drafting the motion to compel and the
26 associated pleadings, totaling approximately \$2,800.00 USD.

1 I declare under penalty of perjury, under the laws of the United States and the State of
2 Texas, that the foregoing is true and correct. Executed this 11th day of January, 2016, in Austin,
3 Texas.

4 /s/ Craig S. Jepson
5 Craig S. Jepson
6 Attorney, Reed & Scardino, LLP
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